

## RIGHT OF ENTRY AGREEMENT

1. This Agreement is entered into between Wisconsin Central, Ltd. ("Railroad"), with a mailing address of 17641 Ashland Avenue, Homewood, Illinois, and Northern States Power Company, a Wisconsin corporation ("NSPW"), with a mailing address of 1414 West Hamilton Avenue, P.O. Box 8, Eau Claire, Wisconsin 54702-0008 to facilitate the performance of certain work to be completed pursuant to a consent decree ("CD") NSPW has entered into with the United States Environmental Protection Agency ("EPA") and the State of Wisconsin (the "State").

2. Railroad, solely to the extent of its right, title and interest, without any warranty, expressed or implied, hereby grants to NSPW and its officers, employees, agents, representatives, contractors and/or subcontractors authorization and consent to enter upon Railroad's real property located in Ashland, Wisconsin which is part of the Ashland/Northern States Power Superfund Site (the "Site") and more particularly described and depicted on the drawing attached hereto as Exhibit "A" (the "Property"). Railroad also grants to EPA and the State authorization and consent to enter the Property for purposes of inspecting, assessing, monitoring and verifying NSPW's performance of the Work and ensuring NSPW's compliance with the terms and conditions of the CD, but Railroad does not grant EPA or the State authorization or consent to perform any subsurface work or invasive sampling at, on or under the Property. [NOTE: This issue needs to be resolved by EPA.]

3. This consent is granted solely for purposes of allowing NSPW to conduct certain environmental investigations and response activities in accordance with the work to be performed pursuant to the CD and as described with more particularity in the Statement of Work ("SOW"), attached hereto as Exhibit "B", and the EPA-approved Remedial Design Work Plan incorporated therein by reference and attached hereto as Exhibit "C". Exhibits B and C collectively define the "Work."

4. Railroad grants this consent subject to the understanding that NSPW will:

4.1. ensure that the Work conducted on the Property is performed in a workmanlike manner and, to the extent applicable, in such manner and at such time as not to interfere with, obstruct, or unduly delay the safe passage of the Railroad's trains or the functioning of its signal and communications systems or any fiber optic cable system, if any;

4.2. take due precautions against injury and damage to persons or property (including utilities); and

4.3. return said real estate to substantially the same condition, reasonable wear and tear excepted ~~and, as existed prior to the Work,~~ considering the nature of the Work, as existed prior to and in a manner that would, to the extent feasible and permitted by EPA not be inconsistent with the use and development of the Property as a recreational trail upon conclusion of the Work, failing in which the Railroad, after providing written notice to NSPW, and allowing NSPW a reasonable amount of time to return the real estate to substantially the same condition, may do so and the reasonable cost of which shall be paid by NSPW.



5. NSPW agrees to provide, by email to Railroad's Manager, Environmental Operations, Brian Hayden (brian.hayden@cn.ca) and Counsel-U.S. Environment, Rick Verkler (rick.verkler@cn.ca), at least five (5) business days' notice before commencing any excavation, subsurface work or invasive sampling at, on or under the Property. Such notice shall include, at a minimum, a description of the work to be performed and the estimated duration thereof. During the duration of this Agreement, Railroad shall be provided with copies of or electronic links to monthly reports required by the CD simultaneously with the provision of same to EPA and the State, which shall describe the anticipated activities for the upcoming month. It is the intent of this notice requirement to provide the Railroad sufficient detail to determine whether its representatives should be present to view such work. Representatives of the Railroad or its consultant may, at Railroad's election, accompany NSPW and its representatives while on the Property. Before entering any active work area, all personnel shall have received and provide sufficient evidence of necessary safety training as defined in the Health & Safety Plan and Contingency Plan ("HASP") implemented pursuant to the SOW and will comply with all EPA approved health and safety plans developed to implement the Work provided to Railroad by NSPW.

6. NSPW shall comply with, and cause its contractors and subcontractors to comply with, all safety, operating and clearance requirements that may be reasonably imposed by Railroad's Engineering Department as a condition of entering the Property and provided such requirements do not conflict with the Work, the HASP and any other EPA approved plans to implement the Work.

7. Solely for purposes limited to the access provided by this Agreement, NSPW shall indemnify, defend, and hold Railroad and its employees, successors and assigns harmless from and against any claims, losses, damages or liability, together with all expenses, reasonable attorneys' fees and costs incurred or sustained by Railroad, directly and proximately caused by NSPW's negligence in the exercise of the rights herein granted, the negligence of any employee, officer, agent, contractor, subcontractor, licensee or invitee of NSPW on the Property, or the failure of NSPW to comply with the conditions of this Agreement. At the election of Railroad, NSPW shall assume or join in the defense of any claim. NSPW's indemnity obligations shall survive the termination of this Agreement.

Notwithstanding anything herein to the contrary, NSPW shall have no obligation to indemnify Railroad under this Paragraph for any claims, losses, damages or liability, together with all expenses, reasonable attorneys' fees and costs incurred or sustained by Railroad, resulting from or attributable to the ~~sole~~ negligence or willful misconduct of Railroad.

Further, notwithstanding anything provided herein to the contrary, ~~each~~ NSPW and Railroad each hereby deny to the fullest extent possible any and all liability or responsibility with respect to the environmental condition of the Site and fully reserve all rights, claims and defenses with respect thereto, and neither party intends by entering into this Agreement to waive same as to each other or as to any third party, including, but not limited to, those matters concerning or relating to the costs incurred in the performance of the Work, past costs incurred to address site conditions, costs incurred for natural resource damages related to site conditions, or with respect

to any liabilities or costs arising out of or related to the conditions, ownership, control, or operation of the Site. Without limiting the generality of the foregoing reservation, each of the Railroad and NSPW expressly reserves any and all rights (including, but not limited to cost recovery and contribution, pursuant to Sections 107 and 113 of CERCLA, and actions arising under the Clean Water Act, or state law or common law), defenses, claims, demands and causes of action that each may have with respect to any matter, transaction, or occurrence relating in any way to the Site, including the Work that will be performed subject to this Agreement, against any party, including each other. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. This provision shall survive termination of this Agreement.

8. NSPW shall procure and maintain, or cause its contractor to procure and maintain, in effect at all times during access hereunder, a Commercial General Liability insurance policy insuring Railroad against any and all liability, damages, costs and expenses resulting from or arising in connection with bodily injury (including death) to any person and/or loss, damage or destruction of any property resulting from, growing out of or incidental to the presence or activities of any employee, officer, agent, contractor, subcontractor, licensee or invitee of NSPW on the Property or NSPW's exercise of the rights herein granted. Such insurance shall have a minimum combined single limit of \$5 million per occurrence with an aggregate limit of \$5 million per annual policy period with no deductible and said insurance shall be deemed primary as it relates to this Agreement.

Said policy shall name Railroad as an additional insured and shall include a provision that the policy will not be changed, cancelled, terminated or not renewed without at least thirty (30) days' advance written notice from the insurance carrier to the Railroad.

Said policy shall not contain an exclusion for injuries or damage occurring on or near railroad property and shall be written to include a waiver of subrogation provision providing that the insurer shall have no claim or recourse of any kind whatsoever against Railroad. The form of the insurance policy is subject to Railroad approval, which shall not unreasonably be withheld.

A certificate evidencing that such insurance is in effect and that the same will not be changed, cancelled, terminated or not renewed without at least thirty (30) days' advance written notice by the insurance carrier to Railroad shall be furnished to Railroad via certified mail at the address set forth above addressed to Richard A. Verkler.

NSPW shall have no right to enter upon or use the Property until said policy is secured and approved by Railroad, such approval to not be unreasonably withheld.

9. This Agreement shall not be transferred or assigned to any third party (other than a corporate affiliate or successor) without the written consent of the nontransferring or nonassigning party hereto, but nothing herein shall prohibit NSPW from subcontracting the activities to be performed under this Agreement to a contractor or subcontractor. This Agreement may only be amended or extended in writing signed by both parties hereto.

10. Either party's exercise or failure to exercise any rights under this Agreement shall not relieve the other party of any responsibility under this Agreement.

11. This Agreement shall continue in effect until completion of the Work as determined by EPA. ~~Railroad may terminate this Agreement for NSPW's failure to comply with the terms hereof after providing NSPW thirty (30) days' notice of such alleged failure and an opportunity to cure.~~ or as long as physical access to the Property is needed, whichever is earlier. **[NOTE: This issue needs to be resolved by EPA.]**

12. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument. NSPW and Railroad ~~agree~~ agrees to negotiate in good faith to execute such further documents as may be reasonably necessary to effectuate the purpose and intent of this Agreement, including the execution of ~~that certain a~~ permanent structures easement agreement if determined to be necessary and convenient by the parties and EPA. for installation of a containment wall or monitoring wells at the Property. **[NOTE: This issue needs to be resolved by EPA.]**

13. Upon the approval by EPA of the ICIAP required by the CD as part of the Work, Railroad shall register the Property and such institutional controls on databases controlled or administered by the State pursuant to § 292.12(3), Stats. NSPW shall provide a draft of the ICIAP to Railroad for their opportunity to review and comment prior to submitting a final ICIAP to EPA for review and approval. **[NOTE: This issue needs to be resolved by EPA.]**

[Signature pages follow.]

The parties have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2012.

Wisconsin Central, Ltd.

Northern States Power Company

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_